IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3027 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? Yes

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? Yes

5. Whether it is to be circulated to the Civil Judge? Yes

---

CHAITALI CO-OP HOUSING SOC LTD

Versus

COMPETENT AUTHORITY (ULC)

---

Appearance:

Shri N.M. Kapadia, Advocate, for Shri M.C. Kapadia, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the Respondents

---

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 08/05/96

ORAL JUDGEMENT

Is a co-operative housing society registered under the law relating to co-operative societies after coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) and thereafter acquiring land from land-holders after obtaining

permission from the competent authority under sec. 26(1) thereof exempt from provisions contained in Chapter III thereof? This is the main question arising in this petition under articles 226 and 227 of the Constitution of India. The petitioners have thereby challenged the correctness of the order passed by the Competent Authority at Surat (respondent No. 1 herein) on 18th January 1986 under sec. 8(4) of the Act as affirmed in revision by the order passed by and on behalf of the State Government (respondent No. 2 herein) on 11th March 1988. By his impugned order, respondent No. 1 declared the holding of petitioner No. 1 to be in excess of the ceiling limit by 4927.925 square meters.

2. The facts giving rise to this petition move in a narrow compass. Petitioner No. 1 is a co-operative housing society (the Society for convenience) registered under the Gujarat Co-operative Societies Act, 1961 on 2nd May 1980. A copy of its registration certificate is at Annexure A to this petition. Petitioner No. 2 is its President. It purchased certain parcels of land from four different persons admeasuring 1492.25 square meters each after obtaining permission by each purchaser under sec. 26(1) of the Act. The total holding of the society thereupon came to 5969 square meters. It appears that the society was required to file its declaration under sec. 6(1) read with sec. 15(1) of the Act. Thereupon it submitted its declaration in the prescribed form. That form was processed by respondent No. 1. After observing necessary formalities under sec. 8 thereof, by the order passed by him under sub-section (4) thereof, respondent No. 1 found the holding of the society to be to the tune of 6427.925 square meters and declared its holding to be in excess of the ceiling limit by 4927.925 square meters. Its copy is at Annexure F to this petition. It appears that the petitioners did not carry the matter in appeal under sec. 33 of the Act. Thereupon pursuant to the final statement issued under sec. 9(1) of the Act, the notification under sec. 10(1) thereof came to be issued, followed by the notification under sec. 10(3) thereof It appears that thereafter the notice under sec. 10(5) of the Act was issued and possession of the excess land from the society was taken on 23rd February 1987. It appears that at that stage the society moved respondent No. 2 under sec. 34 of the Act for seeking revision of the order at Annexure F to this petition. A copy of the memo of its revisional application is at Annexure G to this petition. By the order passed by and on behalf of respondent No. 2 on 11th March 1988, respondent No. 2 rejected the aforesaid revisional application. Its copy is at Annexure H to

this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure F to this petition as affirmed in revision by the order at Annexure H to this petition.

3. Learned Advocate Shri Kapadia for the petitioners has urged that the land held by a co-operative housing society is exempted from applicability of the provisions contained in Chapter III of the Act by virtue of sec. 19(1)(v) of the Act and the land held by it even beyond the ceiling limit prescribed thereunder could not have been declared surplus. Learned Advocate Shri Kapadia for the petitioners has further urged that in view of exemption granted to a co-operative housing society by virtue of sec. 19(1)(v) of the Act, such society is not required to file any declaration under sec. 6(1) or under sec. 15 read with sec. 6(1) thereof. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has urged that, in order to claim exemption under sec. 19(1)(v) of the Act, a co-operative housing society should be in existence prior to coming into force of the Act and it should have held land prior thereto. It has been urged by learned Assistant Government Pleader Shri Sompura for the respondents that a co-operative housing society registered after coming into force of the Act is not entitled to any exemption under the aforesaid statutory provision if its holding is in excess of the ceiling limit. In any case, runs his submission, a co-operative housing society, acquiring land after coming into force of the Act, is not entitled to exemption thereunder if its holding is in excess of the ceiling limit.

4. It would be quite proper to look at sec. 19 of the Act in order to appreciate rival submissions urged before me. It reads:

19. Chapter not to apply to certain vacant lands.(1) Subject to the provisions of sub-section (2), nothing in this Chapter shall apply to any vacant land held by-

(i) the Central Government or any State Government, or any local authority or any Corporation established by or under a Central or Provincial or State Act or any Government company as defined in Sec. 617 of the Companies Act, 1956 (1 of 1956);

(ii) any military, naval or air force institution;

(ii) any bank;

Explanation.- In this clause, "bank" means any banking company as defined in Cl.(c) of Sec. 5 of the Banking Regulation Act, 1949 (10 of 1949), and includes-

(a) the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934);

(b) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);

(c) a subsidiary bank as defined in the State Bank of India (subsidiary banks) Act, 1959 (38 of 1959);

(d) a corresponding new bank constituted under sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(e) the Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948 (15 of 1948), the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956 (31 of 1956), the Unit Trust of India, established under the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Development Bank of India Act, 1964 (18 of 1964), the Industrial Credit and Investment Corporation of India, the Industrial Recosntruction Corporation of India and any other financial institution which the Central Government or the State Government concerned may, by notification in the official Gazette, specify in this behalf;

(iv) any public charitable or religious trust (including wakf) and required and used for any public charitable or religious purposes :

Provided that the exemption under this clause shall apply only so long as such land continues to be required and used for such purposes by such trust;

(v) any co-operative society, being a land mortgage bank or a housing co-operative society, registered or deemed to be registered under any law relating to co-operative societies for the time being in force :

Provided that the exemption under this clause, in relation to a land mortgage bank, shall not apply to any vacant land held by it otherwise than in satisfaction of

its dues ;

(vi) any such educational, cultural, technical or scientific institution or club (not being a Corporation established by or under a Central or Provincial or State Act referred to in Cl. (i) or a society referred to in Cl. (vii) as may be approved for the purposes of this clause by the State Government by general or special order, on application made to it in this behalf by such institution or club or otherwise :

Provided that no approval under this clause shall be accorded by the State Government unless that Government is satisfied that it is necessary so to do having regard to the nature and scope of the activities of the institution or club concerned, the extent of the vacant land required bona fide for the purposes of such institution or club and other relevant factors ;

(vii) any society registered under the Societies Registration Act, 1860 (21 of 1860), or under any other corresponding law for the time being in force and used for any non-profit and non-commercial purpose;

(viii) a foreign State for the purposes of its diplomatic and consular mission or for such other official purposes as may be approved by the Central Government or for the residence of the members of the said missions;

(ix) the United Nations and its specialised agencies for any official purpose or for the residence of the members of their staff ;

(x) any international organisation for any official purpose or for the residence of the members of the staff of such organisation :

Provided that the exemption under this clause shall apply only if there is an agreement between the Government of India and such international organisation that such land shall be so exempted.

(2) The provisions of sub-section (1) shall not be construed as granting any exemption in favour of any person, other than an authority, institution or organisation specified in sub-section (1), who possesses any vacant land which is owned by such authority, institution or organisation or who owns any vacant land which is in the possession of such authority, institution or organisation :

Provided that where any vacant land which is in the possession of such authority, institution or organisation, but owned by any other person, is declared as excess vacant land under this Chapter, such authority, institution or organisation shall, notwithstanding anything contained in any of the foregoing provisions of this Chapter, continue to possess such land under the State Government on the same terms and conditions subject to which it is possessed such land immediately before such declaration.

Explanation.- For the purposes of this sub-section, the expression "to possess vacant land" means to possess such land either as tenant or as mortgagee or under a hire-purchase agreement or under an irrevocable power of attorney partly in one of the said capacities and partly in any other of the said capacity or capacities.

It may be noted that sec. 19 applies to "any vacant land held" by the entities mentioned therein. It cannot be gainsaid that the word "held" occurring therein is the past participle of the word "to hold". The expression "to hold" is defined in sec. 2(l) to mean to own such land or to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement or partly in one of the said capacities or partly in any other of the said capacity or capacities. The explanation appended thereto is not material for the present purpose. In the context the word "held" occurring in the earlier part of sec. 19(1) of the Act has to be understood.

5. It may be noted that the crucial words are "nothing in this chapter shall apply to any vacant land held" by the entities named in sec. 19(1) of the Act. The word "held" is not qualified or modified by any expression like "prior to coming into force of the Act" or any other like expression. If the submission urged before me by learned Assistant Government Pleader Shri Sompura to the effect that, in order to claim exemption under sec. 19(1)(v) of the Act, the society should not only be not in existence prior to coming into force of the Act but it should have held land prior to its commencement has to be accepted, the aforesaid statutory provision will have to be read as "nothing in this chapter shall apply to any vacant land held prior to commencement of this Act" or "prior to coming into force of this Act". In that case, the emphasised portion will have to be added. In this connection a reference

deserves to be made to the binding ruling of the Supreme Court in the case of Union of India and another v. Deoki Nandan Aggarwal reported in AIR 1992 SC 96. It has been held therein :

> "It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or frame the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there."

In view of the aforesaid dictum of law pronounced by the Supreme Court, it would not be open to me to add words to the aforesaid statutory provision which I am required to do if I accept the aforesaid submission urged before me by learned Assistant Government Pleader Shri Sompura for the respondents.

6. The same situation would arise if the argument canvased before me by learned Assistant Government Pleader Shri Sompura to the effect that all the entities and institutions mentioned in sec. 19(1) of the Act should be in existence on the date of coming into force of the Act is accepted. In that case, a proviso might be required to be added at the end of sub-section (1) of sec. 19 of the Act to the effect that provided all the aforesaid entities and institutions are in existence on the date of coming into force of the Act. In view of the aforesaid binding ruling of the Supreme Court, it would not be open to this Court to add any words to the aforesaid statutory provision.

7. As pointed out hereinabove, the language of the aforesaid statutory provision is quite clear. Its interpretation to the effect that it is not necessary to have existence of the entities and institutions on the date prior to coming into force of the Act does not result in any absurd situation. Its interpretation to the effect that acquisition of land by such entities and institutions even after coming into force of the Act will be covered by the exemption does not violate any canon of common sense. Such interpretation would not frustrate the avowed object of the litigation. On the contrary, as will be pointed out hereinafter, this is the only interpretation possible and it would be in consonance with the avowed object behind bringing on the statute

book this piece of legislation.

8. By virtue of clause (i) of sub-section (1) of sec. 19 of the Act, any vacant land held inter alia by any State Government is exempted from operation of chapter III thereof. If the argument to the effect that such State should be in existence prior to coming into force of the Act is accepted, it would result in some anomalous situation qua the State deriving its existence by an act of Parliament after coming into force of the Act. For example, the State of Mizoram has come into existence by the State of Mizoram Act, 1986. That was certainly subsequent to the date of coming into force of the legislation relating to urban land ceiling. It may be noted that Mizoram was formerly a Union Territory. The status of a State was conferred on it by the aforesaid piece of legislation by the name of the State of Mizoram Act, 1986. By virtue of sec. 31 thereof, all properties and assets within the then existing Union Territory of Mizoram as were held immediately before the appointed day by the Union for purposes of governance of that Union Territory on or from that day passed on to the State of Mizoram. It would mean that all vacant lands in the Union Territory of Mizoram passed on to the State of Mizoram on the appointed day which expression is defined to be the day which the Central Government by notification in the official Gazette appointed. That notification was admittedly after the enactment of the State of Mizoram Act, 1986. It would mean that all vacant lands in existence in the Union Territory of Mizoram were acquired by the State of Mizoram from the appointed day as defined therein. If the aforesaid argument advanced by the learned Assistant Government Pleader Shri Sompura for the respondents is accepted, the State of Mizoram was required to file the declaration in the prescribed form under sec. 6(1) read with sec. 15 of the Act. That is certainly not what is contemplated by this piece of legislation pertaining to urban land ceiling.

9. An absurd situation might arise if the position is examined from a different angle. Let us assume a situation that the declaration in the prescribed form filled in by a land-holder under sec. 6(1) of the Act is processed after the State of Mizoram came into existence and a large area of land (say admeasuring 25000 square meters) is declared surplus and the order declaring such land surplus is affirmed right upto the Supreme Court. Pursuant to the final statement, the notification under sec. 10(1) of the Act would be issued followed by the necessary notification under sec. 10(3) thereof. The

result of issuance of the notification under sec. 10(3) of the Act would be vesting of the excess land in the State Government, that is, in the State of Mizoram for the purpose of this illustration. It would certainly be a new acquisition by the State of Mizoram. It did not exist on the date of coming into force of the Act. It did not hold the land vesting in it prior to coming into force thereof. In that case, if the aforesaid argument canvassed before me by learned Assistant Government Pleader Shri Sompura for the respondents is to be accepted, the State of Mizoram would be required to file the declaration in the prescribed form under sec. 6(1) read with sec. 15 of the Act with respect to the land vested in it by virtue of the notification issued under sec. 10(3) thereof. That would result into an absurd situation. It could not have been contemplated or envisaged by the law-makers. Such interpretation of sec. 19(1) of the Act can never be countenanced. It needs no telling that the same absurd situation would arise with respect to states coming into existence after coming into force of the Act like the State of Goa, the State of Delhi and other similarly situated States.

10. Under clause (viii) of sub-section (1) of sec. 19 of the Act exemption is granted to any vacant land held by a foreign state for the purposes of its diplomatic or consular missions or for such other official purposes as may be approved by the Central Government or for the residence of the members of such missions. If the aforesaid argument canvassed before me by learned Assistant Government Pleader Shri Sompura for the respondents is accepted, such foreign state should have been in existence prior to coming into force of the Act and it should have held land even also prior thereto. It is our common knowledge that so many new nations have sprung up after 17th February 1976, the date on which the Act came into force. Such nations coming into existence after commencement of the Act would need vacant lands to establish their embassies or their consulates in the capital city of this country or some other metropolitan city like Bombay. They might have to acquire some vacant land even beyond the ceiling limit prescribed for that area for the purpose. They cannot claim exemption under sec. 19(1)(viii) of the Act if the aforesaid submission urged before me by learned Assistant Government Pleader Shri Sompura for the respondents is accepted. The Act does not prohibit establishment of an embassy or a consulate by a nation coming into existence after coming into force of the Act.

11. It cannot be gainsaid that what would apply to a

state for the purposes of clause (i) or a foreign state for the purposes of clause (viii) of sub-section (1) of sec. 19 of the Act would apply to all other entities and institutions mentioned in other clauses thereof. Wherever the legislature wanted to put restrictions on acquisition by such entities or institutions, the necessary provisions in that regard have been made by enacting the provisos to the concerned clauses.

12. That brings me to clause (v) of sub-section (1) of sec. 19 of the Act. The society is obviously a housing co-operative society. It will be governed by this clause. No proviso is enacted to carve out any exception in respect of a co-operative housing society. The proviso appended thereto carves out an exception qua a land mortgage bank and not any co-operative housing society. It does not make any mention that, in order to claim exemption, such housing society should have its existence prior to coming into force of the Act. It does not provide for holding of a vacant land by such society before commencement of the Act. It appears that the legislature in its wisdom has deliberately not chosen to do so. The reason therefor is quite simple. The legislature presumably did not want to stall the growth of co-operative housing societies. It cannot be gainsaid that a co-operative housing society is formed for providing housing accommodation to its members. With a view to realising such object such society will be required to acquire some vacant land for the purpose. The extent of such vacant land could be beyond the ceiling limit prescribed for that urban agglomeration. It cannot be gainsaid that law provides against transfer of any vacant land in excess of the ceiling limit by virtue of sec. 5(3) thereof> It is thus clear that a co-operative housing society cannot purchase any land beyond the ceiling limit prescribed for that area by one single transaction. It can however purchase land within the ceiling limit from a land-holder who obtains permission under sec. 26(1) of the Act. If such society purchases certain parcels of land within the ceiling limit from land-holders after obtaining permission under sec. 26(1) of the Act and in the process the entire holding by such Society exceeds the ceiling limit prescribed for that area, by virtue of sec. 19(1)(v) of the Act, such society will be entitled to hold such land though beyond the ceiling limit. Exemption from operation of Chapter III of the Act is granted thereby. Such interpretation in favour of a co-operative housing society is in consonance with the avowed object behind this piece of legislation relating to urban land ceiling.

13. Once it is found that a co-operative housing society (whether existing prior to or subsequent to commencement of the Act) is exempted from operation of Chapter III thereof, it can hold (whether before or after commencement of the Act) land in excess of the ceiling limit and it will not be required to file any declaration under sec. 6(1) read with sec. 15(1) thereof. It needs no telling that Chapter III of this Act starts from sec. 3 and ends with sec. 24. It may be noted that prohibition against holding of the land beyond ceiling limit is found in sec. 3 thereof. Section 6 thereof requires a person to file the declaration in the prescribed form with respect to his holding beyond the ceiling limit. Section 15 thereof requires a person to file his declaration in the prescribed form with respect to any new acquisition by him as mentioned therein. All these provisions are found in Chapter III of the Act.

14. Learned Assistant Government Pleader Shri Sompura for the respondents has then urged that a State Government would not be a person within the meaning of sec. 2(i) of the Act and would therefore not be amenable to sections 3, 6 and/or 15 thereof whereas a co-operative housing society would be a person for the purposes. This submission has to be stated only to be rejected. The reason therefor is quite simple. Article 300 of the Constitution of India provides for a legal proceeding like a suit by or against inter alia a State Government. It cannot be gainsaid that a legal proceeding can be instituted by or against a person, whether natural or artificial. When the aforesaid constitutional provision is made with respect to a legal proceeding by or against inter alia a State Government, no room for doubt is left that it would be a person in the eyes of law. It would certainly be an artificial or a legal person. It will be on par with any co-operative society in that regard.

15. Reliance on the ruling of this Court in the case of Muktinagar Co-operative Housing Society Ltd. v. Competent Authority and Deputy Collector, Ahmedabad & Ors. reported in 1988(1) 29(1) G.L.R. 49 will not come to the rescue of the respondents in this case. In that case, a co-operative housing society purchased land from a land-holder after coming into force of the Act who had filed his declaration in the prescribed form under sec. 6(1) of the Act. That form was processed and certain area of land in his holding was declared surplus. At that stage, the society in that case made a grievance that it was not heard though it was an interested person. On interpretation of the relevant provisions contained in the Act and the Rules framed thereunder, this Court came

to the conclusion that the society was not an interested person as it came into existence after coming into force of the Act. Besides, it was found by this Court in the aforesaid ruling that the transaction entered into by the society with the land-holder was contrary to law. It cannot be gainsaid that sitting as a Single Judge the aforesaid ruling is binding to me. Even otherwise, I am in respectful agreement therewith. It will however not be applicable to the facts of this case. The society in the present case does not clamour for a right of hearing with respect to declaration of any holding surplus in the hands of a land-holder. As aforesaid, the society has purchased vacant lands after obtaining permission under sec. 26(1) of the Act. It is thus clear that transactions were not contrary to law. What the society claims is that, by virtue of sec. 19(1) (v) of the Act, Chapter III thereof would not be applicable to it. In that view of the matter, the aforesaid binding ruling of this Court in the case of Muktinagar Co-operative Housing Society (supra) is distinguishable on its own facts.

16. Practically to the same effect are the rulings of this Court in the cases of New Jalaram Park Co-operative Housing Society Ltd. and another v. Ramachandra M. Chauhan and others reported in 1988(1) 29(1) G.L.R. 82 and Suryapur Co-operative Housing Society Ltd. v. State of Gujarat and another reported in 1989(1) 30(1) G.L.R. 674 and Navsarjan Industrial Co-operative Society Ltd. v. State of Gujarat and others reported in 1995(1) G.L.H. 1011. All the aforesaid rulings of this Court are distinguishable on their own facts and on the same reasoning by which the aforesaid binding ruling of this Court in the case of Muktinagar Co-operative Housing Society (supra) is distinguished.

17. A reference deserves to be made to the Divison Bench ruling of this Court in the case of Union of India v. State of Gujarat and another reported in 1993(1) 34(1) G.L.R. 903. In that case, certain immovable properties were stated to be transferred by some persons. The income-tax authority, after the receipt of the statement under sub-section (3) of sec. 269 U.C. of the Income-Tax Act, 1961, made an order for the purchase by the Central Government of such immovable properties at an amount equal to the amount of apparent consideration. After such preemptive purchase of the immovable properties by the Central Government, the said properties were put to auction and were sold but, in order to make such sale effective, the sale deeds were required to be registered. The registering authority refused to register in view of the circular of the Central

Government of 7th June 1976 issued in connection with the law relating to urban land ceiling. The registering authority insisted that the Chief Commissioner of Income-tax should file the necessary declaration in the prescribed form under sec. 6(1) of the Act read with sec. 15 thereof. In that context this Court has held that, in view of sec. 19(1) of the Act, Chapter III thereof will not be applicable to the Central Government. Sitting as a single Judge, I am bound by the aforesaid Division Bench ruling of this Court. Even otherwise, I am in respectful agreement therewith. The view taken by me in this case is in consonance with the law declared by this Court in its aforesaid Division Bench ruling in the case of Union of India vs. State of Gujarat and another (supra).

18. In view of my aforesaid discussion, I am of the opinion that this petition deserves to be accepted. Since the society was covered by sec. 19(1)(v) of the Act, it could hold land in excess of the ceiling limit and it was not required to file any declaration in the prescribed form under sec. 6(1) of the Act read with sec. 15 thereof. If it has filed any declaration in the prescribed form, it has to be ignored. Any order passed pursuant to such declaration will be of no consequence.

19. In the result, this petition is accepted. The order passed by the Competent Authority at Surat on 18th November 1986 at Annexure F to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 11th March 1988 at Annexure H to this petition is quashed and set aside. Any consequential actions like issue of the notification inter alia under sec. 10(3) of the Act, and taking over of possession of the excess land declared surplus by the order at Annexure F to this petition are also quashed and set aside. It transpires from the impugned order at Annexure H to this petition that possession of the excess land has been taken over from petitioner No. 1-society. The respondents are directed to restore possession to the society through its president whosoever he may be as expeditiously as possible but latest by 31st August 1996. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

---